

Department of Energy

§ 504.9

petroleum or natural gas, or both, in amounts exceeding the minimum amount necessary to maintain reliability of operation consistent with maintaining reasonable fuel efficiency of the mixture.

(b) In making the technical feasibility finding required by former section 301 (b) and (c) of the Act and paragraph (a) of this section, OFP may weigh “physical modification” or “de-rating of the unit,” but these considerations, by themselves, will not control the technical feasibility finding. A technical feasibility finding might be made notwithstanding the need for substantial physical modification. The economic consequences of a substantial physical modification are taken into account in determining financial feasibility.

(Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, and 15 U.S.C. 719 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3269 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); E.O. 12009, 42 FR 46267, Sept. 15, 1977)

[47 FR 17045, Apr. 21, 1982, and 47 FR 50850, Nov. 10, 1982]

§ 504.8 Prohibitions against excessive use of petroleum or natural gas in mixtures—certifying powerplants.

(a) In the case of certifying powerplants, OFP may prohibit the use of petroleum or natural gas in such powerplant in amounts exceeding the minimum amount necessary to maintain reliability of operation consistent with maintaining the reasonable fuel efficiency of the mixture. This authority is contained in section 301(c) of the Act, as amended. The owner or operator of the powerplant may certify at any time to OFP that it is technically capable and financially feasible for the unit to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source. In assessing whether the unit is technically capable of using a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source, for purposes of this section, the extent of any physical modification necessary to convert the unit

and any concomitant reduction in rated capacity are not relevant factors. So long as a unit as proposed to be modified would be technically capable of using the mixture as a primary energy source under § 504.6(c), this certification requirement shall be deemed met. The criteria for certification of financial feasibility are found at § 504.6(f). In addition, the powerplant's owner or operator must submit a prohibition compliance schedule, which meets the requirements of § 504.5(d).

(b) If OFP concurs with the certification, a prohibition order against the unit's excessive use of petroleum or natural gas in the mixture will be issued following the procedure outlined in § 501.52 of these regulations.

(c) The petitioner may seek to amend its certification in order to take into account changes in relevant facts and circumstances by following the procedure contained in § 501.52(d).

NOTE: The authority of OFP implemented under this section should not be confused with the other two fuel mixture provisions of these regulations. One is the general requirement that petitioners for permanent exemptions demonstrate that the use of a mixture of natural gas or petroleum and an alternate fuel is not economically or technically feasible (See § 504.15). The second is the permanent fuel mixtures exemption itself (See § 504.56).

(Approved by the Office of Management and Budget under control number 1903-0077)

(Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*); Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, and Pub. L. 95-620 (15 U.S.C. 719 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, as amended by Pub. L. 97-35 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35)

[47 FR 17045, Apr. 21, 1982]

§ 504.9 Environmental requirements for certifying powerplants.

Under §§ 501.52, 504.5 and 504.6 of these regulations, OFP may prohibit, in accordance with section 301 and section 303 (a) or (b) of FUA, as amended, the use of natural gas or petroleum, or both, as a primary energy source in any certifying powerplant. Under sections 301(c) and 303(a) of FUA, as amended, and §§ 501.52, 504.6, and 504.8 of

these regulations, OFP may prohibit the excessive use of natural gas or petroleum in a mixture with an alternate fuel as a primary energy source in a certifying powerplant.

(a) *NEPA compliance.* Except as provided in paragraph (c) of this section, where the owner or operator of a powerplant seeks to obtain an OFP prohibition order through the certification procedure, and did not hold either a proposed prohibition order under former section 301 of FUA or pending order under section 2 of ESECA, it will be responsible for the costs of preparing any necessary Environmental Assessment (EA) or Environmental Impact Statement (EIS) arising from OFP's obligation to comply with NEPA. The powerplant owner or operator shall enter into a contract with an independent party selected by OFP, who is qualified to conduct an environmental review and prepare an EA or EIS, as appropriate, and who does not have a financial or other interest in the outcome of the proceedings, under the supervision of OFP. The NEPA process must be completed and approved before OFP will issue a final prohibition order based on the certification.

(b) *Environmental review procedure.* Except as provided in paragraph (c) of this section, environmental documents, including the EA and EIS, where necessary, will be prepared utilizing the process set forth above. OFP, the powerplant owner or operator and the independent third party shall enter into an agreement for the owner or operator to engage and pay directly for the services of the qualified third party to prepare the necessary documents. The third party will execute an OFP prepared disclosure document stating that

he does not have any conflict of interest, financial or otherwise, in the outcome of either the environmental process or the prohibition order proceeding. The agreement shall outline the responsibilities of each party and his relationship to the other two parties regarding the work to be done or supervised. OFP shall approve the information to be developed and supervise the gathering, analysis and presentation of the information. In addition, OFP will have the authority to approve and modify any statement, analysis, and conclusion contained in the third party prepared environmental documents.

(c) *Financial hardship.* Whenever the bona fide estimate of the costs associated with NEPA compliance, if borne by the powerplant owner or operator, would make the conversion financially infeasible, OFP may waive the requirement set forth in paragraphs (a) and (b) of this section and perform the necessary environmental review.

(Approved by the Office of Management and Budget under control number 1903-0077)

(Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*); Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, and Pub. L. 95-620 (15 U.S.C. 719 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, as amended by Pub. L. 97-35 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35)

[47 FR 17046, Apr. 21, 1982]

APPENDIX I TO PART 504—PROCEDURES FOR THE COMPUTATION OF THE REAL COST OF CAPITAL

(a) The firm's real after-tax weighted average marginal cost of capital (K) is computed with equation 1.

$$\text{EQ 1} \quad K = w_d \left[\frac{\hat{R}_d (1-t)}{1-f_d} - \text{INF} \right] + w_p \left[\frac{\hat{R}_p}{1-f_p} - \text{INF} \right] + w_e \left[\frac{\hat{R}_e}{1-f_e} - \text{INF} \right]$$